SBCivil Writ Petition No.711/2005

Bharat Singh v. PNB, Bhilwara & Ors.

Date of Order :: 2nd December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr.S.Saruparia, for the petitioner.
Mr.Yashwant Mehta, for the respondents.

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Plaintiff respondent Punjab National Bank preferred a suit for recovery of money against the petitioner defendant before learned District Court, Bhilwara. Learned trial court by its order dated 2.6.2004 adjourned proceedings of the case for completion of cross examination of plaintiff's witness Shri Mithulal and fixed the same on 3.6.2004 at 7.30 AM. On 3.6.2004 as nobody was present on behalf of the defendant, learned trial court closed the cross examination at 8.20 AM. The trial court while closing cross examination fixed the matter for final argument on 7.7.2004. Being aggrieved by the order dated 3.6.2004 the instant writ petition is preferred by the petitioner.

It is contended by counsel for the petitioner that there was no occasion to fix the case for final arguments on completion of plaintiff's evidence. According to the counsel for the petitioner learned trial court denied right of defence to the defendant by fixing the suit for final arguments on 7.7.2004. It is also contended by counsel for the petitioner

defendant that closure of cross examination of Shri Mithulal which was partly taken place on 2.6.2004 is also arbitrary.

Heard counsel for the parties and also perused the record.

ON 2.6.2004 learned trial court adjourned the proceedings of the suit for 3.6.2004 while continuing cross examination of Shri Mithulal. Learned trial court closed cross examination on 3.6.2004 at 8.20 AM as nobody on behalf of the defendant was present to cross examine the petitioner.

It is true that the court acted well within its jurisdiction while closing the cross examination, however, such power should always be exercised with caution and only in cases where court is satisfied that a party to the proceedings intentionally avoiding its appearance with view to prolong the case. In normal course anxiety of the court should be to provide complete opportunity to parties to the proceedings to adduce evidence which is necessary for adjudication of the lis between the parties.

In the facts and circumstances of the present case I consider it appropriate to meet the ends of justice to reopen the cross examination of plaintiff's witness Shri Mithulal which was closed by the trial

court by the order impugned dated 3.6.2004, subject to the condition that defendant plaintiff deposits a cost of Rs.500/- with the trial court.

By the order dated 3.6.2004 the trial court fixed the matter for arguments on 7.7.2004. The fixing of the matter for arguments without providing an opportunity of defence to the defendant is contrary to the established procedure of holding adjudication, as such the order dated 3.6.2004 is apparently illegal to the extent it pertains to fixing of the case for final arguments on 7.7.2004. The court below by an order dated 9.11.2004 dismissed an application preferred by the defendant petitioner to recall the order dated 3.6.2004 but the same shall be having no consequence in view of the order made hereinunder on basis of discussion made above.

The writ petition deserves acceptance. The same, therefore, is allowed. The order impugned dated 3.6.2004 is quashed. The trial court is directed to allow defendant petitioner to cross examine plaintiff's witness Shri Mithulal subject to deposition of cost of Rs.500/- with the trial court and then to proceed further in accordance with law.

No order as to costs.

( GOVIND MATHUR ),J.

kkm/ps.